

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RICHARD GENE GUY, *et al.* Class Action,

Plaintiff,

v.

No. 12cv1225 MV/RHS

UNITED STATES DEPARTMENT OF DEFENSE, *et al.*,

Defendants.

**MEMORANDUM OPINION AND ORDER DENYING MOTION FOR LEAVE TO
APPEAL IN FORMA PAUPERIS**

THIS MATTER comes before the Court on Plaintiff's Motion for Permission to Appeal *In Forma Pauperis*. (Doc. 18, filed March 27, 2014). The Court concludes that Plaintiff's motion is not made in good faith and **DENIES** the motion.

Background

Plaintiff filed a complaint and motion to proceed *in forma pauperis* in this Court on January 18, 2011. *See Guy v. A.I.G.*, No. 11cv63 WJ/RHS ("the 2011 case"). The Court denied his motion to proceed *in forma pauperis* after finding that there "appears to be no reason why Guy cannot apply his prison income to payment of his filing fees instead of discretionary commissary purchases." (Doc.5 at 2). The Court also dismissed his case "for failure to state a cognizable federal claim and for lack of subject-matter jurisdiction." (*Id.* at 7). The Court then concluded that Plaintiff's appeal was not taken in good faith and denied Plaintiff's motion for leave to appeal *in forma pauperis*. (Doc. 11, filed March 10, 2011).

Plaintiff then filed a complaint and motion to proceed *in forma pauperis* before the Court in the District Court for the District of Columbia on September 14, 2012. (*See* Doc's 1 and 2). On October 26, 2012, the District Court for the District of Columbia transferred Plaintiff's case

to this Court. (*See* Doc. 6). After noting that Plaintiff's complaint in this case and his complaint in the 2011 case were "against the same Defendants [and] based on the same allegations," this Court denied his motion to proceed *in forma pauperis* and dismissed his repetitive complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2), for the same reasons stated in the Memorandum Opinion and Order dismissing the 2011 case. (Doc. 13 at 7). Plaintiff then filed a motion, now before the Court, for leave to appeal *in forma pauperis*. (Doc. 18).

Leave to Appeal *In Forma Pauperis*


"[A] party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court." Fed. R. App. P. 24(a)(1). "In order to succeed on his motion, an appellant must show a financial inability to pay the required filing fees and the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal." *DeBardleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991). "A suit 'is frivolous where it lacks an arguable basis either in law or fact' or is 'based on an indisputably meritless legal theory.'" *Banks v. Vio Software*, 275 Fed.Appx. 800, 801 (10th Cir. 2008) (*quoting Neitzke v. Williams*, 490 U.S. 319, 325 (1989)).

Plaintiff has not shown the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues he raises on appeal. The Court has determined that Plaintiff's complaint is frivolous. (*See* Doc. 13 at 7). Plaintiff's conclusory allegations in his motion for leave to appeal *in forma pauperis*, that the Court misunderstood the merits of his case and did not construe the facts in the light most favorable to Plaintiff, do not demonstrate that his complaint has an arguable basis in law or fact. (*See* Doc. 18).

The Court concludes that Plaintiff's motion for leave to appeal *in forma pauperis* is not taken in good faith because Plaintiff has not shown that there are any nonfrivolous grounds to

appeal. *See Moore v. Oklahoma Housing Finance Agency*, 458 Fed.Appx. 711, 713 (10th Cir. 2012) (“The Supreme Court has held that an appeal is taken under § 1915 in objective good faith when it presents ‘any issue not frivolous.’ Conversely, an appeal is frivolous when the result is obvious, or the appellant's arguments of error are wholly without merit.”) (*quoting Coppedge v. United States*, 369 U.S. 438, 445 (1962)).

IT IS ORDERED that Plaintiff’s Motion for Permission to Appeal *In Forma Pauperis*. (Doc. 18, filed March 27, 2014) is **DENIED**.



MARTHA YAZQUEZ
UNITED STATES DISTRICT JUDGE